

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BRICE YINGLING D/B/A ALAMO
AUTOSPORTS and ANDY SCOTT,

Plaintiffs,

v.

EBAY INC.,

Defendant.

No. C 09 01733 JW (PVT)

FINAL ORDER AND JUDGMENT

This matter came before the Court for a Fairness Hearing on March 28, 2011, on the motion ("Motion") of Class Representatives Brice Yingling d/b/a Alamo Autosports and Andy Scott on behalf of the class certified by this Court on July 27, 2010 (Docket No. 185), for approval of the settlement ("Settlement") set forth in the settlement agreement dated December 10, 2010 (the "Settlement Agreement") (filed as part of Docket No. 202). Due and adequate notice having been given to the class, and the Court having considered all papers filed and proceedings had herein and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. As used in this Order the capitalized terms not otherwise defined herein have the meanings set forth in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter of the Litigation and over all Class Members, and to consider and enter this Order.

3. The notice given to Class Members of the Settlement and related matters constitutes the best notice practicable under the circumstances and complies in all respects with the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and all other applicable laws.

1 4. The Court has been advised of any objections to the Settlement and has given fair
2 consideration to any such objections.

3 5. Class Representatives and Class Counsel on the one hand and Defense Counsel
4 and Defendant on the other have conducted arm's length negotiations in good faith, which
5 resulted in the proposed Settlement reflected in the Settlement Agreement.

6 6. The parties have submitted evidence demonstrating, and the Court finds, that
7 Defendant has provided the notices as required by the Class Action Fairness Act of 2005, Pub. L.
8 109-2 (2005), and specified in 28 U.S.C. § 1715.

9 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
10 approves the Settlement as set forth in the Settlement Agreement, finds that said Settlement is, in
11 all respects, fair, reasonable, and adequate with respect to the Class, and directs that the
12 Settlement be consummated in accordance with the terms and conditions set forth in the
13 Settlement Agreement. The Settlement Agreement is hereby incorporated by reference.

14 8. Each Plaintiff and each Class Member, and any other Person claiming (now or in
15 the future), through or on behalf of any Plaintiff or Class Member, regardless of whether any such
16 Plaintiff or Class Member ever seeks or obtains by any means any distribution from the Net
17 Settlement Fund established pursuant to the Settlement Agreement, shall be deemed to have fully,
18 finally, and forever released, relinquished, and discharged all Released Claims (including
19 unknown claims) against the Releasees. Each Plaintiff and each Class Member also shall be
20 deemed to have covenanted not to sue the Releasees with respect to all Released Claims, and shall
21 be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any
22 Released Claim against the Releasees.

23 9. Those persons appearing on the list annexed hereto as Exhibit A have properly and
24 timely requested exclusion from the Class, pursuant to the terms of this Court's Hearing Order,
25 and are excluded from the Class, shall not be bound by this Final Order and Judgment, nor
26 receive any benefit thereunder.

1 10. The Settlement shall not be deemed to constitute an admission or finding of
2 liability or wrongdoing on the part of Defendant, or any of the Plaintiffs, Class Members, or
3 Releasees.

4 11. The Distribution Plan described in the Settlement Agreement, the Motion, exhibits
5 to the Motion, and related documents is adjudged to be fair, reasonable and adequate and is
6 hereby approved. Except as required under the Settlement Agreement or unless this Judgment is
7 stayed by a subsequent order of the Court, the pendency of any appeal from this Judgment shall
8 not affect the completion of the Distribution Plan. Class Counsel and the Settlement
9 Administrator are therefore directed to proceed with the Distribution Plan as soon as reasonably
10 practicable after the date when this Judgment becomes Final as defined in the Settlement
11 Agreement.

12 12. Class Counsel are hereby awarded (i) attorneys' fees in the amount of
13 \$7,500,000.00, and (ii) reimbursement of their reasonable documented expenses incurred in an
14 amount not to exceed \$160,000.00. Such amounts are to be paid to Class Counsel from the
15 Settlement Fund within five (5) business days after the Effective Date, and in accordance with
16 Paragraphs 3.15 – 3.17 of the Settlement Agreement. In the event of an appeal, the Settlement
17 Administrator shall reserve an additional \$25,000.00 in settlement funds to insure a source of
18 repayment for out-of-pocket appellate expenses incurred by Class Counsel.

19 13. In making its award of attorneys' fees and reimbursement of expenses, in the
20 amounts described in paragraph 12, above, the Court has considered and finds as follows:

21 a. The Settlement has provided significant relief to the Class.

22 b. The Settlement Notice was published to at least 2,524,469 putative
23 Settlement Class members. Only 2 objections were filed against the terms of the proposed
24 Settlement.

25 c. Class Counsel have conducted the litigation and achieved the Settlement
26 with skill, perseverance, and diligent advocacy on behalf of Plaintiffs and the Class as a whole.
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1 d. The Litigation involves complex factual and legal issues and, in the
2 absence of Settlement, would involve further lengthy proceedings and uncertain resolution of
3 such issues.

4 e. Had Settlement not been achieved, there would remain a significant risk
5 that the Class may have recovered less or nothing from Defendants, and that any recovery would
6 have been significantly delayed.

7 f. The amount of attorneys' fees and reimbursable expenses awarded to Class
8 Counsel is fair and reasonable, given the number of attorney hours expended to achieve the
9 Settlement on behalf of Plaintiffs and the Class as a whole, the associated litigation and financial
10 risks involved, and the estimated value of the settlement benefits obtained for the Class, and the
11 amount awarded is consistent with awards for similar work in similar cases.

12 14. An incentive payment of \$15,000.00, is hereby awarded to each of the Class
13 Representatives in the Litigation: Brice Yingling d/b/a Alamo Autosports and Andy Scott. The
14 Settlement Administrator shall pay \$15,000.00 from the Settlement Fund to each of the specified
15 individuals, in care of Class Counsel, within five (5) days after the Effective Date, and in
16 accordance with Paragraph 3.19 of the Settlement Agreement.

17 15. Subject to Court approval, any balance remaining in the Net Settlement Fund at
18 the end of the Distribution Plan (whether by reason of uncashed checks or otherwise) shall be
19 disbursed pro rata to Stanford Law School, Southern Methodist Law School, the University of
20 Texas Law School, the National Consumer Law Center, and Archive.org.

21 16. Defendant and the Releasees shall not be liable for any additional fees or expenses
22 for Class Counsel or counsel of any Plaintiff or Class Member in connection with the Litigation,
23 beyond those expressly provided in the Settlement Agreement.

24 17. Without further order of the Court, the Settling Parties may agree to reasonable
25 extensions of time to carry out any of the provisions of the Settlement Agreement.

26 18. Jurisdiction is reserved, without affecting the finality of this Final Order and
27 Judgment, over:
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EXHIBIT A

EXHIBIT A – List of Excluded Class Members

	<u>Name</u>	<u>eBay Customer Number</u>
1.	Robin Andre-Thomas	91031732
2.	Ray Andrus	3256956
3.	Albert H. Attee	46511758
4.	Bryan Belcher	6169544
5.	Bryan Belcher	22673421
6.	Barbara J. Black / Schoolroom Collectibles	71779234
7.	Benita Borton	33024927
8.	Sara Burrington	173202248
9.	Myron & Carol Clauzel	97125953
10.	Josh Dahl	97785570
11.	Jonathan Dinges	16856423
12.	Sean Ervin	139562457
13.	Justin Faggart	43510739
14.	Matthew R. Farrington	221222140
15.	David Ferrit	220103034
16.	Teresa Gough	79207775
17.	Joseph L Gugliotta Jr	95326658
18.	Jasmin Guillen	779360838
19.	Imogene S. Horsfield	16980114
20.	Thomas P. Karnowka	3232719
21.	Jay C. Keaton	203809177

22.	Brian Lent	285703140
23.	Daniel R. Locke	77086799
24.	David McQuality	8892230
25.	Richard Mercure	40274570
26.	Ryan Montague	292048969
27.	Catherine J.S. Nadeau	78834087
28.	Annette L. Neff	16603583
29.	Charles R. Nichols	889550049
30.	Ruth A. Norris	47826430
31.	Timothy John Parkhurst	35520498
32.	Greg M. Phillips	56162762
33.	Brian J. Queiser	37166309
34.	Mike Robinson / Crown Jewelry & Loan	31016439
35.	Todd Schroder	441812
36.	Tom Sharman	14368350
37.	Barton L. Small	54976013
38.	Kenny Tate	162331309
39.	Kenny Tate	531562
40.	Robert C. Westphall	699627955
41.	M. Young	85177821